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Involvement of Superfund Program Managers in Superfund Response Agreement Audits

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

OSWER Directive 9375.5-04

FEB 12 1990

MEMORANDUM:

SUBJECT: Involvement of Superfund Program Managers in Superfund Response Agreement Audits

FROM: Henry L. Longest II, Director
Office of Emergency and Remedial Response

TO: Director, Waste Management Division
Regions I, IV, V, VII, VIII
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Regions III, VI
Director, Toxic and Waste Management Division
Region IX
Director, Hazardous Waste Division
Region X

Purpose

This directive provides general information to Superfund program managers about the audit process. Although the material pertains primarily to audits of Cooperative Agreements, it may be applied to audits of Superfund State Contracts (SSCs) as well. This is a reference document, not an audit guide. Although the responsibility for responding to an audit may not rest with Superfund program managers, all of us must anticipate this scrutiny and involvement in the process. An audit is not to be considered a fault-finding mission, but rather, a good business practice that often brings positive change.

Background

In signing a Superfund Cooperative Agreement, the recipient gives the Environmental Protection Agency (EPA) the right to audit that Agreement, pursuant to the Inspector General Act of 1978, as amended (5 U.S.C. App.3) and Section 111(k) of the Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA), as amended (42 U.S.C. 9611(k)). EPA may audit any type of Superfund Cooperative Agreement[2] or SSC while it is in effect, or may conduct an audit at the completion of federally funded activities.

The general objectives of an audit are twofold. The first is to determine whether costs claimed under the Agreement by the recipient are allowable (i.e., eligible, reasonable, necessary, allocable to the project, and consistent with applicable Federal cost principles) under the terms and conditions of the Superfund Response Agreement, (including all applicable EPA and Federal regulations and directives).

The second is to determine whether controls exercised by the recipient through its financial and project management, accounting, procurement, and property management systems are adequate to ensure that costs meet these criteria.

Objective

The objective of this directive is to provide Superfund program managers with a summary of the types of audits and an overview of the audit process. The following steps outline this process:

- Schedule for the audit and preliminary activities
- Performance of the audit
- Resolution of audit findings and follow-up actions
- Implementation of corrective actions.

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1. The term "recipient" includes States, political subdivisions thereof, and federally recognized Indian Tribes in either a lead or support agency role.

2. This includes pre-remedial, removal, enforcement, single-site, multi-site, and Core Program Cooperative Agreements.

This is one in a series of directives to carry the number 9375.5, which are guidance relating to State, political subdivisions, and federally recognized Indian Tribal involvement in the Superfund program. We recommend setting aside a special binder for the directives in this 9375.5 series. Indexing and keywording will be done under the Office of Solid Waste and Emergency Response (OSWER) Directives System.

Implementation

This directive provides a detailed outline of the audit process. Program managers are encouraged to refer to the guidance referenced throughout this directive Additional information on audits can be obtained from the Divisional Inspector General for Audits (DIGA) covering your Region or the Headquarters' Office of the Assistant Inspector General for Audits (OAIGA) at FTS or (202) 382-4106.

A. THE AUDIT REVIEW

EPA may conduct an audit prior to the award of a Superfund Response Agreement, at any time during the period of performance of the Agreement, or as part of the close-out activities. The OIAGA makes initial contact with the recipient and the audit is usually performed in the recipient's office and includes a thorough review of: the recipient's accounting, procurement, and property management systems; all costs incurred on a project; and compliance with the terms and conditions of the Response Agreement. Exhibit 1 presents several scenarios that can prompt an audit.

EXHIBIT 1
Potential Reasons for Conducting an Audit of Superfund Response Agreements

- Before an award is made, to ensure that the recipient can implement the terms and conditions of the response agreement
- Six months to one year after the award of a Cooperative Agreement to ensure that the recipient is appropriately segregating and accounting for costs on a site-specific basis
- Instances where the recipient has an interest in significantly expanding its involvement in the Superfund program or has requested a major amendment to an existing project
- At the request of the recipient to resolve potentially questionable cost issues, or to ensure that appropriate corrective actions will be undertaken early in project implementation
- High staff or management turnover
- Previous audits of the recipient have indicated significant management problems
- Indications or allegations of fraud, waste, or mismanagement
- Quarterly reports and other deliverables are not received on time or reports indicate problem areas
- Disbursements do not accurately reflect project progress
- Requests for verification of CERCLA, as amended, Section 104(c)(5) credits
- Non-compliance or inattention to the requirements of Quality Assurance/Quality Control Plans, Site Safety Plans, contractor oversight, Community Relations Plans, or to the other provisions of the Response Agreement
- At the conclusion of one activity, such as a remedial investigation/feasibility study, at a site
- At the close out of a Response Agreement.

B. Types of Audits

The four categories of audits are discussed below:

1. Pre-Award Audits

Pre-award audits may be conducted by the OAIGA at their discretion or at the request of a State, political subdivision, or Indian Tribe. The purpose of a pre-award audit is to assess the capabilities of a party that is entering into a Superfund Cooperative Agreement for the first time, or that is taking the lead role in a response activity for which it has not had previous lead responsibility. The intent of these audits is to review a wide range of program-related issues and to identify program needs in addressing this new responsibility before problems arise. These reviews are not routine; however, as more States, political subdivisions, and Indian Tribes become involved in Superfund response, the number of pre-award audits is likely to increase.

2. Interim Audits

An interim audit may be conducted during any phase of an on-going project to determine whether the costs charged to EPA under the Superfund Cooperative Agreement are allowable and whether the recipient is complying with the terms and conditions of the Agreement. EPA may schedule interim audits when an Agreement covers a particularly complex project or when problems, inaccuracies, discrepancies, or other complications with administration occur. The interim audit is used as a corrective tool. Therefore, when improvements are needed, the interim audit final report will contain recommendations for corrective actions that EPA and/or the recipient should take to avoid future problems.

3. Final Audits

Final audits may be conducted when Superfund Response Agreements are terminated or closed out, when activities are completed, or when projects within a multi-site Cooperative Agreement (MSCA) are concluded. Final audit of a Superfund Cooperative Agreement may be scheduled upon submission of the final Financial Status Report (SF-269) at the conclusion of the activity.

Final audits are performed to determine whether costs charged by the recipient to EPA under the Superfund Cooperative Agreement were allowable and to verify that any remaining funds have been deobligated or, in the case of an MSCA, have been transferred to another site and/or activity. In addition, the final audit is

performed to ensure that the project(s) completed under the Cooperative Agreement meet all agreed-upon terms and conditions, and that the desired results have been achieved.

4. Other Audits

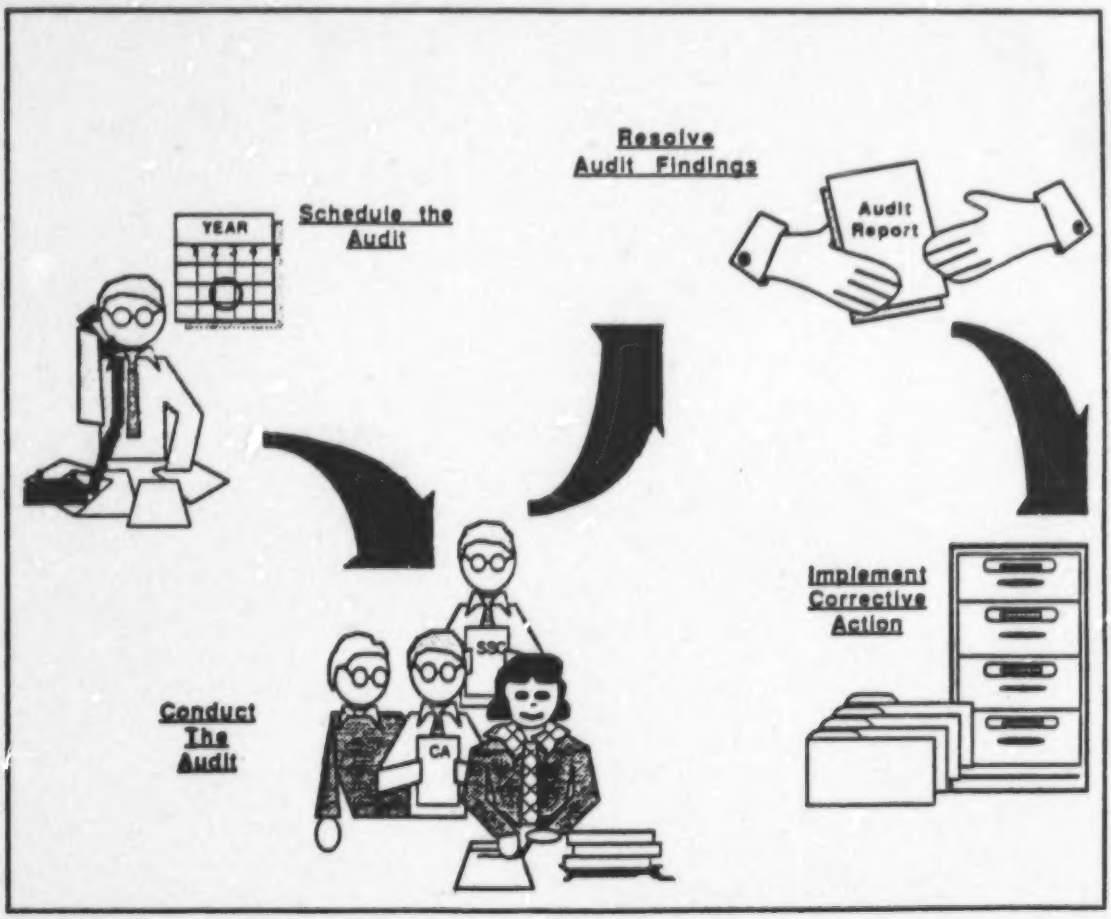
In contrast to financial audits, which evaluate management of Superfund Cooperative Agreements by entities outside EPA, the OAIGA also conducts performance audits of EPA management practices. Performance audits may address Regional management oversight of not only Superfund Cooperative Agreements, but also SSCs, and the supporting management processes/systems that deal with Superfund obligations and outlays. Although auditors may perform some work at support-agency offices during performance audits, the focus is on the EPA Regional office.

In addition, audits of State and local governmental units are required as recipients of Federal assistance awards in accordance with the Single Audit Act (Public Law 98-502) and OMB Circular A-128. These require an auditor to report on: 1) the financial statements of the government, department, agency, or establishment; 2) internal accounting and other control systems used in administering Federal financial assistance programs; and 3) compliance with the applicable laws and regulations.

B. THE AUDIT PROCESS

Audits are the responsibility of the OAIGA within the EPA Office of the Inspector General (OIG). The four step audit process is outlined in Exhibit 2 below. You may find it useful to obtain and review the "Audit Handbook for EPA Managers" from the Director, Resource Systems Management Division, at FTS or (202) 382-4425.

EXHIBIT 2
The Four-Step Audit Process



The Four-Step Audit Process

The audit process outlined in this guidance pertains to OAIGA audits of Superfund Cooperative Agreements and is applicable to SSCs. This guidance does not describe the single audit process. For further information on the single audit process and the Single Audit Act of 1984, see OMB Circular A-128. Although these audits are different and separate, similar information, i.e., compliance with Federal law and regulations, may be required as both part of the EPA's OAIGA audit process and the single audit process. The OAIGA, however, is responsible for monitoring the adequacy of audit findings conducted under the Single Audit Act. This process is discussed below:

1. Scheduling the Audit and Preliminary Activities

The OAIGA schedules an audit on its own initiative, at the Superfund program's request, or at the recipient's request. The DIGAs deal directly with recipients and Regional staff to schedule the audit, resolve any questions or problems, and provide advice, as necessary. Actual audit work may be performed by employees of the OAIGA, or by an independent public accounting firm under contract to EPA to perform audits.

The EPA Regional personnel should be prepared to provide relevant background information on the administration and implementation of the Superfund Cooperative Agreement by the recipient, and the status of funded projects and reports required in a Cooperative Agreement and/or SSC. Specifically, the auditors will want to review:

- The Cooperative Agreement/project files, including all applications and amendments
- The SSC files, if applicable
- Correspondence or memoranda concerning problem areas
- Quarterly and final reports for the Superfund Response Agreement, as required in 40 CFR Part 35 Subpart O
- Documentation of Agreements, amendments, and supporting documents (i.e., letters, memoranda, minutes of meetings, and logs of telephone conversations).

Before the audit begins, the recipient should ensure that all records pertaining to the Superfund Cooperative Agreement and/or SSC are up-to-date and accessible including:

- Accounting books and records covering the receipt and disbursement of funds; time and attendance records; travel; other project costs such as equipment and training; and cost share, as applicable

- Bank account records and cancelled checks

- Copies of quarterly and technical progress reports, as well as any other documents specified by the Cooperative Agreement or SSC

- A list of all equipment and supplies purchased for the Superfund project and, for final audits, a copy of the property inventory report and disposition of the property

- Copies of Financial Status Reports (SF-269)

- Copies of Federal Cash Transaction Reports (SF-272)

- Procurement documents including contract files, payment and receiving documents, and memoranda of contract negotiations

- Copies of cost-share payment documents for SSC reconciliation of response costs

- Correspondence relating to activities conducted under the Superfund Response Agreement

- A list of key personnel working on the project and their functional responsibilities.

2. Procedures for the Audit

Once the audit has been scheduled and background information obtained from the Region, audit work can begin in the field or recipient's office.

a. Entrance Conference

Before beginning work in the recipient's office, the auditors will hold separate entrance conferences with recipient and Regional personnel to introduce the audit team, explain the scope and nature of the audit, and obtain any suggestions on the audit emphasis. Additional topics to be covered include: the schedule for completing the audit, provisions for accessing records and project information, and the audit team's space and

equipment requirements. The auditors will also conduct an in-depth interview with both the recipient and EPA technical project managers to obtain relevant background and status information.

b. Standardized Audit Tasks

Although audits differ depending on their scope and purpose, and on the complexity of the activities funded, the auditors will perform generally standardized tasks. These include the following:

- Determine whether the recipient is complying with the provisions of the Superfund Response Agreement
- Evaluate the recipient's system for accounting for site-specific costs and ability to document these costs
- Evaluate non-contractual costs incurred and reported
- Evaluate costs incurred and reported by the recipient for contractual services
- Determine whether the controls being used to ensure the appropriateness of contractor performance and billing are adequate
- Determine whether contracts are being awarded in compliance with applicable EPA procurement procedures
- Determine whether letter of credit drawdowns are being handled in accordance with Federal requirements
- Determine whether SSC cost-share payments are being sent to EPA, per the terms of the Agreement
- Determine whether the recipient is complying with EPA property management requirements, including the special requirements of CERCLA for equipment
- Determine whether all required financial and technical reports are being completed and submitted in a timely manner.

Some audits may also include major program performance aspects, such as engineering/scientific review of work products.

c. Draft Audit Report

The results of the auditors' field work are summarized for recipient and program comment in a draft audit report prepared and issued by the OAIGA. This draft report states the purpose and scope of the audit and presents a preliminary description of the audit team's findings.

An audit finding is defined as a written explanation of an audited area, including proposed recommendations, and may concern non-monetary and/or monetary recommendations. Non-monetary recommendations are an explanation of any changes needed to: 1) improve the economy, efficiency, or effectiveness of operations and procedures, or 2) achieve compliance with applicable laws, regulations, guidance, or special terms and conditions contained in the Superfund Response Agreement. Monetary recommendations concern costs incurred by the recipient in the performance of the Agreement/project, and fall into the following categories:

- Accepted costs: are claimed costs that the auditors have concluded are allowable under the terms and conditions of the Agreement or applicable law, regulation, policy, or cost principles, and were properly charged to the Cooperative Agreement

- Questioned costs: are claimed costs that the auditors have concluded should not be allowed because the costs are:

  1. Ineligible -- a cost claimed which is in violation of a provision of a law, regulation, contract, Cooperative Agreement, or other agreement or document governing the expenditure of funds; or

  2. Unsupported -- a cost claimed which, at the time of the audit, is not supported by adequate documentation and/or has not been approved by responsible program officials; or

  3. Unnecessary/unreasonable -- a cost claimed for an expenditure of funds which, at the time of the audit, was not found to be necessary or reasonable.

The recipient and the EPA Action Official (i.e., the Regional person designated to resolve the audit) will receive copies of the draft audit report for comment, unless findings are immaterial or confidential. Confidential findings within the report are those that relate to confidential investigative matters or confidential business information. If significant policy or programmatic issues are raised in the draft report, a copy usually is forwarded to the Office of the Assistant Administrator for Solid Waste and Emergency Response.

Draft audit findings are tentative and subject to change. Consequently, the draft audit report should not be released. Any public requests for draft audit reports should be forwarded to the OIG for response.

The recipient and EPA are strongly encouraged to provide comments on the draft audit report within the time frame specified in the transmittal (usually 30 days from distribution). If an extension is needed, it may be requested by the Action Official. Extensions of up to 30 days are usually approved. Comments on the draft report are considered an important part of the resolution process since the time period for resolution of the final report is less flexible.

d. Exit Conference

EPA's audit process is designed to ensure that the recipient has an adequate opportunity to provide input into the decision-making process. Auditors provide preliminary findings as the audit progresses and may hold informal meetings to discuss these findings. A formal exit conference will be held either at the completion of audit field work, before issuance of the final audit report, or after comments on the draft audit report are received. Meetings may occur separately with recipient and Regional staff members. As a result of the exit conference, auditors may request recipient or Regional staff members to make additional written comments on the draft audit report, which should be submitted promptly within the specified time frame.

e. Final Audit Report

A final audit report takes into consideration written comments that were received on the draft audit report, the exit conference, and documented follow-up actions. This report is used by the Action Official to make a final determination on audit disposition.

The final report will be sent to the responsible Action Official, who must forward a copy of this report to the recipient. Potentially controversial findings are normally highlighted in the transmittal memorandum. At this point, the OAIGA or Action Official may respond to public requests for final audit reports in accordance with the Freedom of Information Act and implementing regulations.

During an audit of a Cooperative Agreement and/or SSC, EPA oversight and administration may also be evaluated. The OAIGA will address these findings and recommendations on EPA deficiencies in a separate report or letter to the responsible EPA official.

3. Resolution of Audit Findings and Follow-up Actions

The final audit report provides advice to the Action Official who can reject or sustain the OAIGA's findings. The Action Official's determination is reported to the recipient in a letter. The final determination letter specifies what corrective actions are required of the State, political subdivision, or Indian Tribe and the total of allowed and disallowed costs.

a. Resolution of Audit Findings

For each audit, the Action Official will set forth any initial determinations, ask the recipient for any rebuttal, evaluate information received, and secure necessary internal review and concurrences. For questioned costs below $100,000, the final determination letter must be issued to the recipient within 150 days of the final audit report date. If questioned costs are at least $100,000, the Action Official must provide the DIGA with a copy of the proposed final determination on the findings within 90 days of the final audit report date. Within 15 days of this transmittal, the DIGA will notify the Action Official of his agreement provided: 1) the proposed final determination agrees with the findings and recommendations in the audit report, or 2) the DIGA accepts the reasons why the determination differs from the audit report, or 3) the DIGA deems the differences to be insignificant.

If the DIGA does not accept the Action Official's position, he will attempt to resolve the differences within 15 days; if these attempts are unsuccessful, the DIGA will notify the OAIGA of the disagreement and advise the Action Official. If the Federal share of questioned costs in the final audit report totals at least $100,000, the Action Official cannot issue a final determination until differences with the OAIGA are resolved.

Once the matter has been referred to the OAIGA, the OAIGA has 45 days to resolve the issue with the help of the DIGA, the Action Official, and the affected EPA Headquarters officials. At the end of that time, the OAIGA must either accept the Action Official's position or refer the dispute to the Audit Resolution Board (ARB) for a decision. Questions regarding ongoing activities pending resolution of the audit should be directed to the Action Official.

b. The Audit Resolution Board (ARB)

The ARB is composed of three regular members: the Assistant Administrator for Administration and Resources Management, the General Counsel, and a Regional Administrator, who is assigned

for a one-year term on a rotating basis. The Inspector General and the Assistant Administrator for the specific program for which the audit was conducted serve in an advisory role to the Board.

The function of the ARB is to resolve major disagreements between the OAIGA and Agency officials responsible for acting on audit recommendations and to establish policy for future actions. Disagreements between the Action Official and the OAIGA involving questioned costs in excess of $100,000 are referred to the ARB for resolution. Once a question involving costs exceeding $100,000 is referred to the ARB, a final determination letter cannot be issued until the questic is resolved. ARB decisions on cases exceeding $100,000 will constitute policy for future actions.

Another function of the ARB is to review issues from final determinations involving costs less than $100,000, solely to establish policy for future actions. These ARB reviews of final determinations involving under $100,000 in questioned costs do not alter the final determination being reviewed.

c. Final Determination Letter

The Action Official must send a final determination letter to the recipient within 150 days of the final audit report, unless a disagreement has been referred to the ARB for resolution. Determination letters are intended to accomplish the following:

- Specify the Agency's final position on all findings and recommendations. As appropriate, the legal and/or other basis for the position should be stated. All questioned costs must be either sustained and, therefore, disallowed, or accepted as allowed

- Identify the actions the recipient must take to be in compliance with EPA regulations and policies and the terms and conditions of the Cooperative Agreement

- Confirm and explain EPA/recipient agreements reached during the resolution process

- Identify any amounts owed to EPA because of disallowed costs

- Provide standard payment instructions (see "Financial Management of Superfund Program", Resources Management Directive 2550D)

- Notify the recipient of its dispute rights under 40 CFR Part 31 Subpart F. The recipient has the right to appeal the position of the Action Official when a disagreement cannot be resolved and to pursue further resolution

- Additional elements may be included, as required.

In audit disallowances under an SSC, the final determination letter takes the place of the Bill for Collection, and must contain the proper Financial Management Office (FMO) address and policy statement regarding payment due dates (see "Financial Management of Superfund Program", Resources Management Directive 2550D).

The recipient may appeal the final determination letter pursuant to 40 CFR Part 31 Subpart F. Appeals are initiated either at the Regional or Headquarters level depending on where the award was made. Final decisions on appeals are rendered by the appropriate Regional Administrator or the Assistant Administrator for OSWER. During the appeals process the recipient may be represented by counsel, may submit material for inclusion in a written record, and is entitled to an informal conference with EPA officials. However, the recipient cannot initiate a review by the ARB, since its function is to resolve internal EPA disagreements.

d. Review for Accuracy

The DIGA reviews all final determinations to evaluate whether or not they are adequate, address each of the findings made in the audit report, and explain EPA's position. Adequate responses will close out the audit report, and the Action Official will be notified to that effect. The audit process will not be considered complete until the Action Official has issued a revised final determination letter that corrects the deficiencies, or he/she has convinced the DIGA either that the deficiencies cited are immaterial or that the recommendations have been addressed.

EXHIBIT 3
Audit Of Response Agreements

ACTIVITY	RECIPIENT ROLE	ACTION OFFICIAL/DESIGNEE ROLE
Schedule Audit and Preliminary Activities	• Ensure that Relevant Material is Available • Prepare List of Key Project Personnel	• Submit Audit Request • Work with Auditors to Clarify Program Procedures • Ensure that Relevant Material is Available
Procedures for Audit	• Participate in Entrance Conference • Provide Information to Auditors, as Requested • Review Draft Audit Report and Prepare Comments, as Appropriate • Consult with Audit Team, DIGA and Action Official on Audit Report Findings • Assist in Resolving Disagreements, as Necessary • Participate in Exit Conference	• Participate in Entrance Conference • Provide Information to Auditors, as Requested • Review Draft Audit Report and Prepare Comments, as Appropriate • Request Extension of Draft Audit Report Review Period, as Necessary • Consult with the Audit Team, DIGA, Regional Counsel and State on Audit Report Findings • Assist Recipient in Preparing Comments on Draft Audit Report, as Necessary • Assist in Resolving Disagreements, as Necessary • Participate in Exit Conference
Resolve Audit Findings	• Assist in Resolving Disputes on Audit Issues • Provide Additional Information to Action Official, as Necessary • Respond to Initial Determination, if Appropriate	• Forward Copy of Final Audit Report to Recipient within 15 Days of Report Date • Forward Copy of Audit Report to Headquarters, if Significant Policy or Procedural Issues Are Raised • Monitor Status of Audit Reports to Avoid Delays or Disputes • Inform Recipient and DIGA of Potentially Controversial Issues/Determinations • Negotiate with DIGA Staff to Resolve Differences, as Necessary • Transmit Initial Determination and Supplementary Analysis to the Recipient, as Necessary • Consult with DIGA on Proposed Final Determination • Provide Copy of Proposed Final Determination to DIGA, if Questioned Costs are $100,000 or More • Resolve Any Differences with DIGA, as Necessary • Issue Final Determination to the Recipient within 150 Days • Provide Copy of All Final Determinations to DIGA
Implement Corrective Actions	• Implement Corrective Actions, as Instructed	• Monitor Status of Recipient Implementation of Corrective Actions • Report Quarterly on Status of Audit Follow-Up to HQ Office • Forward Copy of Final Determination to Servicing Finance Office

4. Implementation of Corrective Actions

The Action Official must establish a system to monitor the disposition of sustained findings on active projects, and must ensure that any corrective actions required by the final determination letter are implemented. As of October 1, 1989, in accordance with the new amendments to the Inspector General Act, EPA is required to track all corrective actions using the Automated Tracking Report (ATR). The Region must consider audit findings and recipient efforts to comply with them before awarding additional funds or subsequent Superfund Cooperative Agreements. In future contracts, the Action Official may also stipulate special conditions to ensure that the recipient of Federal funds takes any required corrective actions. Thorough documentation of any audits should be retained in the official Cooperative Agreement or SSC file. Successful implementation of the necessary corrective actions completes the four-step audit process that is summarized in Exhibit 3.

Contacts

Should you have any questions regarding the Superfund audit process, you may contact Richard Johnson, Grants Administration Division (GAD), at FTS or (202) 382-5296, your DIGA, or Lisa Karpf, Director, Audit Operations staff at FTS or (202) 475-8380. Program-specific questions may be directed to Jan H. Baker, Chief, State Involvement Section, at FTS or (202) 382-2443.